Order

Michigan Supreme Court
Lansing, Michigan

April 21, 2023

Elizabeth T. Clement,
Chief Justice

163110

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163110
COA: 346871
Genesee CC: 13-034148-FC

DEMARIO DESHAWN BONDS,
Defendant-Appellant.
_____/

On March 2, 2023, the Court heard oral argument on the application for leave to appeal the March 25, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

BOLDEN, J. (*dissenting*.)

I respectfully dissent from my esteemed colleagues' denial of defendant's application for leave to appeal in this case, which concerns a preserved speedy-trial claim. Instead, I would have granted the defendant's application for leave to appeal in this case because it illuminates the need for further guidance on how to weigh speedy-trial claims.

Both the United States Constitution and the Michigan Constitution guarantee a criminal defendant the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20. The right to a speedy trial has been codified in MCL 768.1 and is enforced by MCR 6.004(A). In *United States v Graham*, 128 F3d 372, 376 (CA 6, 1997), Judge Damon J. Keith of the United States Court of Appeals for the Sixth Circuit aptly summarized the incredible responsibility courts have in enforcing the constitutional right to a speedy trial:

> It is because the Sixth Amendment right to a speedy prosecution is so fundamental to our justice system, yet so difficult to define in a concrete manner, that it is incumbent upon our Court[s] to zealously defend it. It is only by forcefully admonishing those that flout this right that the Court can define boundaries to guide litigants and courts, and prevent abuses of the right . . . .

In evaluating speedy-trial claims, courts balance (1) the length of the delay, (2) the reasons for delay, (3) whether the defendant asserted his right to a speedy trial, and (4) prejudice to the defendant from the delay. *Barker v Wingo*, 407 US 514, 530 (1972); *People v Williams*, 475 Mich 245, 261-262 (2006).

The time for judging whether the right to a speedy trial has been violated runs from the date of the defendant's arrest. *Williams*, 475 Mich at 261. A delay of more than 18 months is presumptively prejudicial. *People v Collins*, 388 Mich 680, 695 (1972); see also *Williams*, 475 Mich at 262. "After 18 months, the burden shifts to the prosecution to show there was no injury." *Collins*, 388 Mich at 695. However, "a defendant's right to a speedy trial is not violated after a fixed number of days." *Williams*, 475 Mich at 261. "Under the *Barker* test, a presumptively prejudicial delay *triggers an inquiry into the other factors* to be considered in the balancing of the competing interests to determine whether a defendant has been deprived of the right to a speedy trial." *Id*. at 262 (quotation marks and citation omitted; emphasis added).

The United States Supreme Court has recognized that "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Doggett v United States*, 505 US 647, 655 (1992). Moreover, an "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Id*.; see also *Moore v Arizona*, 414 US 25, 26 (1973). The prejudice factor should be analyzed "in the light of the interests of defendants which the speedy trial right was designed to protect." *Barker*, 407 US at 532. The United States Supreme Court identified three interests: (1) prevention of oppressive pretrial incarceration, (2) minimization of "anxiety and concern" of the accused, and (3) limitation of the possibility that the defense will be impaired. *Id*.

This Court has acknowledged that "[t]here are two types of prejudice which a defendant may experience, that is, prejudice to [their] person and prejudice to the defense." *Williams*, 475 Mich at 264 (quotation marks and citation omitted). Although prejudice to the defense or "trial prejudice" is the more serious concern, it is not dispositive. *Id*. Prejudice to a defendant, or "personal prejudice," must still be considered. See *Moore*, 414 US at 26-27 (recognizing that "prejudice to a defendant caused by delay in bringing [them] to trial is not confined to the possible prejudice to [their] defense in those proceedings."). The United States Supreme Court has described the obvious disadvantages to a defendant who cannot obtain pretrial release:

> The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, . . . a defendant [who] is locked up . . . is hindered in [their] ability to gather evidence, contact witnesses, or otherwise prepare [their] defense. Finally, even if an accused

> is not incarcerated prior to trial, [a defendant] is still disadvantaged by restraints on [their] liberty and by living under a cloud of anxiety, suspicion, and often hostility. [*Barker*, 407 US at 532-533 (citations omitted).]

Although the *Barker* test has been adopted by Michigan courts and considers both prejudice to the defendant and prejudice to the defense, it appears that prejudice to the defendant is often overlooked. This Court has provided limited guidance to lower courts in weighing the question of personal prejudice for alleged speedy-trial-right violations, typically, instead, focusing an analysis primarily on prejudice to the defense. See, e.g., *People v Chism*, 390 Mich 104, 114-115 (1973) (finding no prejudice for 27 months' incarceration because there was "no testimony relevant to prejudice to defendant's defense because of the length of the case such as loss of witnesses, etc."); *Williams*, 475 Mich at 264 (acknowledging that while a 19-month delay is presumptively prejudicial, there was no specific proof that the delay prejudiced the defendant's ability to defend); *Collins*, 388 Mich at 694-695 (finding that the prejudice factor was not in defendant's favor merely because eyewitness identification becomes less reliable over time). This case highlights the need for further guidance regarding how lower courts should weigh all types of prejudice that the speedy-trial right is designed to protect against—specifically, how courts should weigh personal prejudice in cases where there is no apparent evidence of trial prejudice.

In this case, it is undisputed that the 26-month delay between defendant's arrest and his trial was presumptively prejudicial and that defendant repeatedly invoked his right to a speedy trial. Moreover, the lower courts acknowledged significant personal prejudice as a result of the delay and pretrial incarceration. However, in weighing the prejudice factor, the courts assigned personal prejudice little, if any, weight. When courts fail to balance the prejudice to a defendant, implicitly determining that "prejudice to the defense" is dispositive, courts fail to fully weigh a defendant's interests under the right to a speedy trial. See *Moore*, 414 US at 26-27.

In sum, this Court and the United States Supreme Court both recognize the importance of considering personal prejudice when deciding cases about speedy-trial rights. But how to consider it remains an open question. I believe this case presented an opportunity for this Court to begin to answer that question. Therefore, I would have granted the defendant's application for leave to appeal.